

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

In the Matter of the Application of)
HERAEUS KULZER GMBH, Petitioner, For) Case No. 3:09 MC 8
an Order Pursuant to 28 U.S.C. § 1782 to)
Take Discovery, Pursuant to the Federal)
Rules of Civil Procedure, of Respondents) Magistrate Judge
Biomet, Inc. and Biomet Orthopedics, LLC) Christopher A. Nuechterlein
for Use in Foreign Proceedings.)
)

**BIOMET, INC. AND BIOMET ORTHOPEDICS, LLC'S
MOTION TO VACATE PETITIONER HERAEUS KULZER GMBH'S
28 U.S.C. § 1782 APPLICATION AND TO QUASH ITS SUBPOENAS**

Pursuant to 28 U.S.C. § 1782 and Rule 45(c)(3) of the Federal Rules of Civil Procedure, Biomet, Inc. and Biomet Orthopedics, LLC respectfully move to: (i) vacate the Application for Discovery filed on January 29, 2009, by Heraeus Kulzer GmbH, and (ii) quash its document subpoenas to Biomet and Biomet Orthopedics. The grounds supporting this Motion are set forth in the accompanying Memorandum of Law.

WHEREFORE, Biomet, Inc. and Biomet Orthopedics, LLC respectfully request that the Court grant their Motion and enter an Order: (i) vacating Heraeus Kulzer GmbH's Application; (ii) quashing Heraeus Kulzer GmbH's subpoenas; and (iii) granting Biomet, Inc. and Biomet Orthopedics, LLC any further relief that the Court believes is appropriate and just. Alternatively, Biomet, Inc. and Biomet Orthopedics, LLC request that this Court condition any discovery allowed from them on reciprocal discovery from Heraeus Kulzer GmbH and any of its subsidiaries/affiliates.

Respectfully submitted:

/s/ Mark F. Criniti

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CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2009, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following: James R. Byron; John R. Carr III; Susan M. Gerber; Robert J. Palmer; Mark F. Criniti; and John D. LaDue. I further certify that on March 2, 2009, I sent a paper copy of the foregoing document to the following by United States First Class Mail:

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